

REMARKS/ARGUMENTS

Claims 22-27, 29-32, 43-51, 53 and 54 are pending in this application.

Applicants thank the Examiner for acknowledging that claims 26, 31, 32, 44, 45, 49 and 53 are directed to allowable subject matter.

In the November 26, 2003 Final Office Action, the Examiner rejected claims 22-25, 27, 29, 30, 43, 46, 48, 50, 51 and 54 under 35 U.S.C. § 102(b) as being anticipated by Raybin (U.S. Patent No. 3,244,317). The Examiner contends that Raybin discloses a system that is capable of collecting bodily fluid comprising a lancing device 15, a lancet magazine 1 storing a plurality of lancets 7 having sterile tip, an opening 24 into which the lancing device can be inserted to remove an individual lancet from the lancet magazine (best seen in Fig. 4) in a first direction substantially parallel to a longitudinal axis of the lancing device, and a transport device (the last lancet 7 located adjacent to the spring 10) adapted to travel within the lancet magazine in a second direction substantially perpendicular to the first direction to transport lancets in the lancet device. In short, the Examiner now contends that the last blade located in the stack of blades 7 (best shown in Figs. 6 and 8 of Raybin), which is located adjacent to the spring 10, is not only a blade, but also the claimed transport device.

"To anticipate a claim under 35 U.S.C. §§ 102(a), (b), or (e), the cited reference must contain each and every element as set forth in the claim. The identical invention must be shown in as complete detail as is contained in the ... claim. The elements must be arranged as required by the claim." (MPEP § 2131, pp. 2100-69 (Aug. 2001) (citations omitted) (emphasis added)). Raybin does not disclose, teach or suggest each and every element of claim 22, as is required for a reference to anticipate a claim.

Claim 22 particularly recites a lancing device, and a lancet magazine for storing a plurality of lancets. The lancet magazine (which stores lancets) also includes the following specific elements: an opening, and a transport device adapted to travel within the lancet magazine ... to transport lancets in the lancet magazine.

As is clearly recited in claim 22, the claimed lancet magazine stores a plurality of lancets, and the lancet magazine includes a transport device which is adapted to transport the lancets in the lancet magazine. As such, claim 22 clearly recites the transport device as a separate structure within the lancet magazine that transports lancets; i.e., it cannot itself be a lancet because it transports the lancets.

The Examiner has previously acknowledged as much. In the June 19, 2003 Office

Action, the Examiner identified Raybin's blades 7 as the plurality of lancets recited in claim 22, and identified Raybin's elements 3 and 10 as the claimed transport device. The Examiner's use of Raybin's blade 7 to satisfy two distinct structures within the claimed lancet magazine (stored lancets and transport device) is improper.

Further, Raybin does not anywhere teach or suggest that a blade in the stack of blades could act as a transport device. Raybin discloses a blade magazine 4 which has posts 5, 6 for holding a stack of surgical blades 7 in position in the casing 2. (Col. 2, lines 25-30). According to Raybin, it is the action of a spring 10 (not the last blade) that presses the stack of blades toward the top of the casing 2 -- spring 10 moves the stack of blades 7. (Col. 2, lines 52-56). Without spring 10, there would be no structure in Raybin's magazine capable of moving a blade or blades toward the top of the casing. In other words, the last blade in the stack of blades 7 cannot be the claimed transport device because it is not by itself capable of moving other blades.

As previously argued by Applicants in their Amendment mailed September 18, 2003 in response to the June 19, 2003 Office Action, Raybin's spring 10 does not meet all of the limitations of the claimed transport device, either. For instance, Raybin's spring 10 does not travel within the lancet magazine as claimed.

For at least these reasons, claim 22 and all claims depending therefrom are patentable over the prior art of record. Applicants submit that this application is in condition for allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case. The Examiner is asked to call Applicant's attorneys, Christine E.M. Orich at 317-684-5414, or James A. Coles at 317-684-5282, to address any outstanding issues in order to expedite the prosecution of this application for all parties.

If necessary, Applicants request that this Amendment be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Amendment be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223

Respectfully submitted,



Christine E.M. Orich
Registration No. 44,987

Indianapolis, IN
(317) 684-5000
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